

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 32**

(Concord, CA)

CONCORD MOTORS, INC., d/b/a
CONCORD HYUNDAI

Employer

and

Case 32-RC-5226

MACHINISTS DISTRICT LODGE 190,
AUTOMOTIVE MACHINISTS LOCAL
LODGE 1173, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

The Employer, Concord Motors, Inc., d/b/a Concord Hyundai, operates a car dealership located in Concord, California. The Petitioner, Machinists District Lodge 190, Automotive Machinists Local Lodge 1173, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of the full-time and regular part-time service technicians employed at the Employer's Concord facility. A hearing officer of the Board held a hearing, and the Employer filed a brief with me.

As evidenced at the hearing and in the Employer's brief, the parties disagree on the following issues: (1) whether the Employer's service advisors must be included in the petitioned-for unit; and (2) whether employees Alex Heredia, Joey Cano and Abel Abrojina, who perform both service technician work and non-service technician work should be included in the unit.

The Employer contends that the service advisors must be included in the petitioned-for unit because they share a community of interest with the petitioned-for unit such that the petitioned-for unit would be inappropriate if the service advisors were not included. The Petitioner contends that the petitioned for unit constitutes a craft unit and that the service advisors are properly excluded from the unit.

The Union contends that Alex Heredia should be included in the unit, even though he spends a significant amount of his time washing cars and driving the Employer's courtesy shuttle for customers.¹ The Union also contends that Joey Cano and should be excluded from the unit

¹ In the record, the non-mechanical work that Heredia, Cano and Abrojina perform was often described as detailer work. The parties did not reach a stipulation regarding whether detailers should be excluded from the unit.

because he is a detailer, not a service technician.² Finally, the Union argues that Abel Abrojina should be voted under challenge because there is insufficient evidence regarding his work duties to determine whether he is properly included in the unit.³ The Employer contends that Alex Heredia, Joey Cano and Abel Abrojina should all be included in the unit, and it contends that if any of these three employees is excluded then they must all be excluded from the unit. The parties agree that the Employer's sales employees, clerical employees, cashiers, parts employees, warranty clerks, administrators, guards and supervisors should be excluded from any unit found to be appropriate.

The unit sought by the Petitioner has approximately 6 employees, while the unit the Employer seeks would include 12 employees.

I have considered the evidence and the arguments presented by the parties on each of these issues. As discussed below, I have concluded that the Employer's service technicians constitute a separate appropriate craft unit for collective bargaining purposes and the service advisors are properly excluded from the unit. I have also concluded that employee Alex Heredia performs a sufficient amount of service technician work to be considered a dual function employee, and he is properly included in the petitioned-for unit. Finally, I have determined that employees Joey Cano and Abel Abrojina shall be allowed to vote subject to challenge, because, due to the short time that they have worked for the Employer, and the conflicting and unclear testimony regarding the work they have performed thus far, I am unable to determine whether they are service technicians or dual function employees who warrant inclusion in a craft unit. Accordingly, I have directed an election in a unit that consists of approximately 8 employees, including the two individuals who will vote subject to challenge.

To provide a context for my discussion of the above-described issues, I will first provide an overview of the Employer's operations. Then, I will present in detail the facts of this case, and the reasoning that supports each of my conclusions on the issues.

THE EMPLOYER'S OPERATION

The Employer is engaged in the sale and service of new and used automobiles. The Employer's operations are divided into separate sales and service departments. Though both departments are located at 1945 Market Street in Concord, California, they operate out of different buildings that are separated by the Employer's display lot. The service department facility contains several separate work areas for the Employer's service department employees, including a large technician work area that is divided into individual technician bays, a service writers' area, a parts department area, and a waiting room for service and parts department customers. In addition to the facility located at 1945 Market Street, the Employer utilizes a storage lot located a few miles away to store vehicles.

William Rogers, the Employer's General Manager and Owner, has owned and operated the facility since October 1, 2003. Rogers oversees both the sales and service portions of the

² The Union also asserted that because the Employer has no formal apprentice program, the Employer cannot seek to include alleged apprentices and helpers into the service technician unit.

³ The Union also alleged that Abrojina was hired to pack the unit and should therefore not be included in the unit. The Union was not permitted to litigate this unfair labor practice issue in the representation case hearing, and I have not considered and I am making no finding in this representation case with regard to the Union's unfair labor practice theory.

Employer's business and supervises all of the Employer's employees. John Cooper, Sr.⁴ is the Employer's Service Manager, and he oversees the Service Department and supervises the Service Department employees.

The Employer's service technicians are responsible for maintaining, diagnosing and repairing customers' automobiles. At the hearing and in its brief, the Employer identified seven employees whom it classifies as service technicians and one employee whom it classifies as a detailer who also performs some service technician work. Five of these eight employees typically spend all or nearly all of their work time performing heavy-duty and/or light-duty automobile maintenance, including such tasks as installing, overhauling and maintaining engines; repairing suspensions, transmissions, and computer systems; repairing head gaskets, brake systems, and electrical systems; and performing recall repairs, tune-ups, lube jobs, oil and filter changes, tire rotations, and/or adjustments to doors and windows. These five full time employees are Jose Caceres, Raul Castillo, Jesse Cooper, Kevin Morrow, and Daniel Vasquez.⁵

These five service technicians have varying degrees of training and skills and generally the most experienced service technicians perform the most complicated work.⁶ The Employer does not require individuals hired as service technicians to be journeyman mechanics or to have mechanic certifications at the time of their hire. However, the Employer's service technicians receive 6 to 8 days per year of specialized mechanical training provided by Hyundai Motor America (Hyundai), which are held at a local mechanics' trade school facility. In addition, two of the service technicians hold numerous certifications in specialized areas of automotive mechanics and at least one has a specific certification from Hyundai. Though the Employer does not have a formal apprenticeship program, more experienced service technicians are used to train the less skilled service technicians.

Service technicians Caceres, Castillo, Cooper, Morrow, and Vasquez each have their own work area, called a technician's bay. As service technicians they are expected to provide their own specialized tools, and it is not unusual for a service technician to own many thousands of dollars worth of tools. These five service technicians also use specialized equipment in the performance of their work including automobile lifts and brake lathes, and computer diagnostic equipment.

The Employer also employs three employees who spend a portion of their work time performing some service technician, but who also regularly perform non-technician duties including detailing, shuttle driving, deliveries, etc. These employees are Joey Cano, Able Abrojina, and Alex Heredia. Employee Alejandro Heredia has worked for the Employer for six months and performs service technician, detailer and shuttle driver work. Heredia reports that he had roughly 5 years of mechanical experience when he was hired. Heredia has his own tools

⁴ The Employer employs several members of the Cooper family, including John Cooper, Sr., the Service Manager, John Cooper, Jr., a service advisor, Jesse Cooper a service advisor, and former employee Jerry Cooper, who was recently laid off. Neither party contends that any employees should be excluded from any unit found appropriate herein based upon their familial relationship to other employees.

⁵ During most of the hearing the Employer referred to these employees as service technicians; however, at one point in the record, Rogers stated that he considers Morrow and Cooper to be apprentices. He did not explain the basis for this characterization. In its brief, the Employer does not allege that Morrow or Cooper are apprentices.

⁶ Although the record does not give the individual wage rates of the service technicians, there is testimony that the service technicians are paid between \$11.00 and \$29.00 per hour.

and is assigned to his own technician bay, where he spends somewhere between 30% to 60%⁷ of his time engaged in service technician work. He regularly performs service tune-ups and light-duty mechanical repairs such as lube jobs, oil changes, filter changes, battery changes, tire rotations, small part changes. He also works occasionally on heavy-duty mechanical work such as transmission work, exhaust work, electrical work and engine intake work. The remainder of Heredia's time is spent detailing cars, which involves cleaning and washing them; running errands, such as UPS drops or bank deposit; and doing a daily courtesy shuttle run each morning. According to the Employer, Heredia is a detailer.

Employee Joe Cano was hired by the Employer on February 16, 2004, roughly two weeks prior to the hearing in the matter. According to the Employer's owner, William Rogers, Cano was hired as a service technician.⁸ It appears that Cano has little to no mechanical or technician experience. Although the Employer has no formal apprenticeship program, Cano has, on some occasions, been assigned to observe and assist service technicians. Service Technician Daniel Vasquez testified that Cano has assisted him by handing him tools, tires or parts as needed and by taking wheels off a vehicle for a tire rotation. According to Vasquez, Cano has also done some oil changes. Cano also spent time washing and moving cars (detailing work), and performing other errands such as taking out the garbage. Cano does not have his own technician bay and does not have his own tools; instead, when he assists a senior service technician in his bay, Cano uses the service technician's tools. The record does not reflect any particular percentage of time that Cano spends working as, assisting or being trained by a service technician, and the testimonial evidence regarding the amount of technician related work he has performed is unclear and contradictory. According to Rogers, Cano spends all of his time performing mechanical repair, if work is available. Vasquez, the service technician who has been training and working with Cano, testified that Cano helps him out "here and there" and spends most of his time detailing or performing other duties. Vasquez also noted that work has been slow lately and apparently this impacted on the amount of technician work that Cano could do. Three other service technicians reported that they had only seen Cano in the service technicians' area once, on the day before the hearing, and until that point, they had observed him only doing detail work.

The Employer hired employee Abel Abrojina two days prior to the hearing in this matter. According to Rogers, Abrojina, like Cano is a service technician.⁹ Abrojina has been assigned to observe and learn service technician duties and to assist the regular service technicians. At the time of the hearing, Abrojina had spent part of one day in the service technicians' work area observing a technician work and "learning the system" of the shop. The remainder of Abrojina's

⁷ The Employer submitted a document purporting to be a summary of Heredia's time cards for a period of about three months, which lists the hours Heredia had worked that were flagged as being work performed on specific repair orders. Though asked, the Employer was unable to explain why it selected only three of the six months that Heredia had worked for the Employer. According to the Employer's document, during the three month period, Heredia spent 143.5 hours in work associated with a repair order and 356.2 hours on work not associated with repair order duties. Heredia testified that he spent roughly 50 to 60% of his time doing service technician work and explained that sometimes his work was not charged to a particular repair order; for example, when he was assisting another technician. In addition, other employees estimated that Heredia spent between 30% and 75% of his time performing service technician work.

⁸ At one point in the hearing, the Employer referred to Cano as an apprentice; however, in its brief in this case, the Employer did not characterize Cano as being an apprentice.

⁹ At one point in the hearing, the Employer referred to Abrojina as an apprentice; however, in its brief in this case, the Employer did not characterize him as being an apprentice.

time was apparently spent at the Employer's storage lot starting vehicles and checking batteries and fuel levels. As noted above, apparently during this time period, the Employer's service department was slow and there was insufficient technician work to keep all of the service technicians busy working on mechanical repairs.

The Employer's three service advisors' Kevin Akana, John Cooper, Jr. and Carlos Arada, are responsible for interfacing with the customers. In this regard, the service advisors greet the customers and discuss with the customers what services or repairs are required for their automobile. The service advisors also look over the customers' cars; obtain necessary information from the cars, such as mileage and vehicle identification numbers; and communicate with the customer regarding any additional work that the Employer recommends be done and regarding when the work will be completed. Advisors also prepare a repair order, which lists the reported problems; assign the repair orders to service technicians for repair based on an assessment of the service technicians skill and experience;¹⁰ and sometimes tell service technicians to temporarily cease working on a project when the service advisor believes the technician is "burning out" on the assignment (working an extended period but not progressing on discovering or fixing the problem).¹¹

Akana estimates that he and Cooper perform minor repairs or adjustments for a customer about four or five times a week, such as replacing light bulbs, windshield wiper blades, batteries, and window regulators. The service advisors also use a handheld computer diagnostic tool that plugs into an outlet inside a vehicle, and this tool reveals what particular problem is causing a vehicle's warning light to illuminate. Depending on the nature of the problem, Akana or Cooper may be able to fix the problem and reset the light; otherwise, they will note the problem on the repair order for the service technician to repair. For example, if a check engine light is illuminated because the vehicle's gas cap is loose, Akana or Cooper can tighten the gas cap and reset the check engine light. Akana and Cooper occasionally perform pre-delivery inspections, which involve looking over the vehicle prior to delivery to customers. Both Kevin Akana and John Cooper Jr., had worked as service technicians for the Employer prior to becoming service advisors. As service technicians they had performed light duty mechanical work.

Akana and Cooper do not perform these repairs/adjustments in the service technicians' work area or a technician bay; rather, this work is generally done on vehicles parked outside the building. Because of the small amount of time involved, customers are not charged for any repair services provided by the service advisors and repair orders are not generated for these repairs unless the item repaired or replaced is under warranty. If a part is required, customers are charged for the part and a part tag is generated.

Some of the service writer repair work takes only a matter of minutes, but replacing a window regulator, takes considerably more time, from 45 minutes to an hour. With regard to the more substantial jobs, Akana testified that he would do these assignments only when the service technicians were too busy. As the evidence indicates that the amount of technician work has dropped in the period prior to the hearing, it would appear that the amount of time service writers

¹⁰ Up until two weeks prior to the hearing, service technician Caceres, who is the lead service technician/foreman, handled the assignment of repair orders to service technicians. There is no evidence in the record regarding why those job assignment duties were transferred from Caceres to the service advisors, nor is there evidence to indicate whether the change was temporary or permanent.

¹¹ Although this evidence regarding the assignment and direction of work is some evidence that the service advisors may be supervisors as defined in the Act, in light of my decision in this case, I have concluded that it is unnecessary for me to address this issue.

spend on technician work will, at least temporarily, decrease. I also note that, the record does not show how often a service writer has replaced a window regulator or performed other time consuming repair work, and the record does not show how much time per week the service writers have spent doing repair work.

The service advisors are paid hourly, are eligible for overtime; do not receive any commission payments, and, like the service technicians, are eligible for the quarterly Hyundai factory service bonus. It appears from the record that the service advisors earn an average of about \$14.27 an hour, which is about 85% of the average wage paid to the service technicians and technician apprentices. Service advisors wear uniforms, consisting on a white shirt and dark pants. They are required to attend a factory sponsored service advisor training program, which is called Service Star Certification, in order to be added into Hyundai's service program. Factory sponsored service advisor training occur approximately two to three days a year and is held in local conference facilities, such as a hotel. Service advisors work staggered schedules starting between 7:30 a.m. and 8:30 a.m. and the last service advisor leaves at 5:30 p.m. At least one service advisor, Kevin Akana, works only 70% of his time as a service advisor. Another 15% of his time is spent in warranty administration, and the remaining 15% of his time is spent in the parts department. There is no evidence in the record regarding whether other service advisors also perform work in the warranty and/or parts departments.

The record demonstrates that service advisors have frequent, daily contact with the service technicians during the course of their work, however, the frequency and degree of interaction appears to vary greatly depending upon the particular repair order and the technician assigned to do the work. Service advisors often hand repair orders directly to the technician and give a verbal explanation of the problem reported. If no discussion is necessary, service advisors would leave repair orders in the service technicians' boxes for pick up. The service technicians consult with the service advisors on a regular basis to clarify what work needs to be done, get more information about the problems reported by the customer, or to advise the service advisors if other repairs are needed on the vehicle. The service advisors contact customers to obtain authorization for additional work and often speak with customers throughout the day to update them on the status of their vehicle. Service advisors may also check in with the service technician periodically to determine when the repairs might be completed. Once a repair is completed, service technicians write on the repair order what work they actually performed and any items they discovered which may need repair in the future. The technician may take the completed repair order directly to the service advisor and orally report that the work was completed, though service technicians also may leave completed repair orders on the service advisors' keyboards. There may be some repairs done where there is no communication whatsoever between the service advisor and service technician, though this appears to be rare, occurring on 10% or less of the repair orders.

ANALYSIS

The Board has long held that a craft unit of service technicians consists of a distinct and homogeneous group of skilled journeymen who are working as such, along with their apprentices and/or helpers. Fletcher Jones Las Vegas d/b/a Fletcher Jones Chevrolet, 300 NLRB 875 (1990); Dodge City of Wauwatosa, 282 NLRB 459, 460 fn. 6 (1986); and Trevelyan Oldsmobile Co.,

133 NLRB 1272 (1961) ¹². As set forth below, in view of the skill and training possessed by the Employer's senior service technicians, the nature of the work they perform and their use of their own specialized tools, I conclude that they are skilled journeymen who are working as such and that they, along with the less skilled service technicians (apprentices) constitute a distinct and homogeneous group, apart from the service advisors and the rest of the service and parts department employees.

The record reflects that the function of the service advisors is sales oriented, in that when the customer first arrives at the dealership, the service advisors are to work with the customer regarding what work the customer wants performed and then are to communicate that information to the service technicians. The customer advisors also contact the customers to discuss possible additional work that could be performed on their vehicles effective and to discuss when work on the customer's vehicle will be completed. The service technicians do not have customer contact and have a very specialized function; namely, mechanical repair work. Three of the Employer's service technicians, Caceres, Vasquez and Castillo are highly trained mechanics who work on the most complex mechanical work that the Employer receives. Two of the three also possess certifications acknowledging advanced skills/training and the third has a certification from Hyundai. All three have their own service bay and tools. Morrow and Cooper, the two experienced full time service technicians, whom Rogers once characterized as apprentices, have their own service bays and tools and are already able to work on relatively difficult mechanical repairs on their own. The five full time service technicians help train and/or receive the assistance of the less experienced service technicians (apprentices). All of the service technicians, presumably including the inexperienced service technicians who do not yet work full time as service technicians, will continue to receive ongoing specialized factory training. In sum, the evidence demonstrates that the Employer employs three service technicians who regularly work on complex mechanical repairs, using their own tools. The Employer also employs some less skilled service technicians who work full time performing substantial, but less complex, mechanical repairs with their own tools. These less skilled service technicians (apprentices) are receiving additional training and are assisting the more skilled service technicians. Therefore, I conclude that the record establishes that the Employer's service technicians constitute a distinct and homogeneous group of skilled journeymen who are working as such, along with the less skilled service technicians (apprentices) and therefore constitute a separate appropriate craft unit. Dodge City of Wauwatosa, above at 460.

In reaching this conclusion, I have carefully considered the Employer's arguments and the evidence relied on by the Employer, including, *inter alia*, that the service technicians have frequent cursory contact with the service advisors; have common supervision in the Service

¹² The fact that the Employer's service technicians (apprentices) have varying degrees of mechanical training and skills and that some of the service technicians (apprentices) are at the earliest stage of their careers and are expected to train under and assist the journeymen service technicians does not make a craft unit inappropriate in the instant case. In Fletcher Jones Chevrolet, 300 NLRB at 876, the Board found appropriate a unit that included mechanics and "quick service technicians" who handled lubrication, oil and filter changes, belts, hoses, and other simple mechanical repair work. The Board noted that the quick service technicians were "helpers or trainees," and cited American Potash & Chemical Corp., 107 NLRB 1418, 1423 (1954), for the proposition that a craft unit includes skilled journeymen together with their apprentices or helpers. In Fletcher Jones Chevrolet, the Board also noted that while the employer had no formal apprenticeship training program, it provided training and classes for its service technician trainees/helpers to maintain and upgrade their skills; and considered the main shop a training ground where employees learn skilled mechanical work by "interfacing" with skilled service technicians. 300 NLRB at 876.

Manager; share common benefits, break rooms, and bathrooms; have similar work hours; and are paid hourly with no commissions. I also recognize that two of the service advisors had been service technicians prior to becoming service advisors. This evidence establishes only that these two groups of employees share a community of interest and could be included together in an appropriate unit. It does not establish that the service technician craft unit is not in and of itself an appropriate unit.

I do note that there is evidence that two of the three service advisors do some minor repair work about four to five times a week. Most of these tasks require limited specialized skills and do not involve extensive amounts of time, such as the replacement of wiper blades, bulbs and batteries.¹³ Similarly, diagnosing and adjusting a loose or misaligned gas cap does not require a great deal of skill or time. It also appears that on those instances when advisors have done minor repairs or part replacements, they have done so on their own accord, as a measure of customer goodwill. Thus, there is no evidence that such actions are a job requirement for service advisors, and I note that there is no evidence that the third service advisor could, much less does, such minor repair work.¹⁴ Significantly, I also note that the service advisors perform this work outside the service technician's work area and do not charge the customers for the time they spend doing the work.¹⁵ The fact that service technicians may perform similar tasks during the course of their heavy and light-duty maintenance work is insufficient to establish a community of interest significant enough to mandate the inclusion of the service advisors to the petitioned-for unit of service technicians. Finally, I note that these two service advisors do not serve as helpers to the service technicians as they perform their work, and the service advisors are not performing the minor repair work as part of some training to become service technicians. In these circumstances, I conclude that the occasional vehicle work performed by two of the three service advisors does not warrant the inclusion of the service advisors into the craft unit.¹⁶

Under these circumstances and the record as a whole, I find the Employer's service technicians constitute a separate appropriate craft unit for collective bargaining purposes.

Dual Function Employees

As noted above, there is evidence that three employees, Heredia, Cano and Abrojina, perform both service technician work and non-service technician work. To include such employees in the unit, it must be determined either that they are service technicians who are incidentally performing other work or that they are dual function employee. Dual function employees are employees who perform more than one function for the same employer. They may be included in a unit even though they spend less than a majority of their time performing unit work, if they regularly perform duties similar to those performed by unit employees for sufficient periods of time to demonstrate that they have a substantial interest in working

¹³ There is some evidence that the service advisors have also replaced window regulators. Although the replacement of a window regulator is more time consuming than the other tasks performed by the service advisors, the record is not clear regarding how often this type of work is performed by a service advisor, and it appears that this type of work is only done when a service technician is not available.

¹⁴ There is also no indication that service technician experience is a job requirement for service advisors and thus there is no basis for assuming that future service advisors will perform such work.

¹⁵ The fact that the customer is not charged for the time the service advisor spends adjusting or repairing a problem is indicative of the fact that the customer service advisor is not spending a great deal of time on such work.

¹⁶ Cf. Fletcher Jones, above at 877. In that case the Board discounted the import of the occasional minor repair or mechanical work performed by some of the parts department and body shop employees.

conditions in the unit. Martin Enterprises, Inc., 325 NLRB 714 (1998); Continental Cablevision, 298 NLRB 973 (1990); Alpha School Bus Co., 287 NLRB 698 (1987); and Oxford Chemicals, 286 NLRB 187 (1987). In determining whether dual-function employees regularly perform duties similar to those performed by unit employees for sufficient periods of time, the Board has no bright line rule as to the amount of time required to be spent in performing unit work. Rather, the Board examines the facts in each particular case. Id. In Oxford Chemicals, for example, the Board found that an employee who regularly performed unit work for 25 percent of each working day was included in the unit.

Although there is considerable dispute as to the amount of time Heredia spends doing service technician work, it is undisputed that Heredia performs unit work nearly 30% of the time. In addition, like the other service technicians, Heredia has his own technician's bay and tools and does the same work as other service technicians. Given such facts, I find that he is appropriately included in the unit. See Oxford Chemicals.

With regard to employees Cano and Abrojina, in view of the limited time that they had worked for the Employer as of the date of the hearing, and the conclusory and inconsistent evidence regarding the nature of the duties that they have been performing, I am unable to determine whether they are service technicians (apprentices) or whether they regularly perform duties similar to those performed by unit employees for sufficient periods of time to demonstrate that they have a substantial interest in working conditions in the unit. Martin Enterprises, Inc., 325 NLRB 714 (1998). As such, I find that they should vote subject to challenge.

I find, therefore, that the following employees constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service technicians employed by the Employer at its Concord, California facility; excluding all other employees, guards, and supervisors as defined in the Act.

There are approximately 8 employees in the unit found appropriate, including the two employees who will be permitted to vote subject to challenge.

CONCLUSIONS

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding,¹⁷ I conclude that:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find that the Employer, a California corporation with a facility and principal office located at 1945 Market St., Concord, California, is engaged in the business of the retail sale and maintenance of automobiles. During the past twelve month period, the Employer had gross retail receipts in excess of \$500,000 and purchased and received goods valued in excess of \$50,000 directly from suppliers located outside the State of California. Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

¹⁷ The Employer's brief has been duly considered.

3. The parties stipulated, and I find that the Union involved is a labor organization within the meaning of Section 2(5) of the Act.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service technicians (automotive mechanics) and technician apprentices employed by the Employer at its Concord, California facility; EXCLUDING all other employees, guards and supervisors as defined by the Act.

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **MACHINISTS AUTOMOTIVE TRADES DISTRICT LODGE NO. 190 OF NORTHERN CALIFORNIA, LOCAL LODGE NO. 1173, INTERNATIONAL ASSOCIATION OF MACHINIST AND AEROSPACE WORKERS, AFL-CIO**. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue in this case.

Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. [Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote.](#) Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. [Excelsior Underwear, Inc.](#), 156 NLRB 1236 (1966); [NLRB v. Wyman-Gordon Company](#), 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the offices of Region 32 of the NLRB, 1301 Clay Street, Room 300N, Oakland, CA 94612-5211, on or before **March 26, 2004**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (510) 637-3315. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington, D.C. by 5 p.m., EST on April 2, 2004. The request may **not** be filed by facsimile.

Dated: March 19, 2004

Alan B. Reichard, Regional Director,
National Labor Relations Board
Region 32

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